



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title) and date issued:

The following Excise Division Directives:

- **7170.1 Use tax on U.W. Government Contracts Awarded**
Prior to Oct. 1, 1983 **Feb. 14, 1984**
- **7170.2 Government Contract Audits** **Feb. 2, 1984**
- **7170.2A Use Tax on Government Contracting Projects** **Oct. 31, 1984**

Reviewer: **Cindy Evans**

Date review completed: **June 26, 2002**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☐

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Briefly explain the subject matter of the document(s):

The United States Supreme Court sustained the government contracting tax applications for Washington in 1983, even though the ultimate economic burden of the tax is borne by the United States Government (Washington v. US, 75 L.Ed 2d 264, 1983). The above-identified directives were issued while the Department was negotiating with federal agencies regarding direct payment of use tax owed by contractors on contracts awarded prior to October 1, 1983. Their purpose was to provide guidance to Audit personnel to ensure uniformity for tax-reporting instructions provided to and audit examinations of contractors performing construction services for the U.S. Government.

While these Audit Directives are not reflected in the database for TAXPEDIA (a search engine available for use by the public and Department personnel via the Internet), copies of these directives have been included in the instruction materials used to train auditors on tax issues related to the construction industry.



2. Need:

YES	NO	
	X	Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
X		Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is “yes” that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
	X	Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington’s citizens? (If the response is “no”, the recommendation must be to repeal the document.)

Please explain.

While these documents provided important instructions to Department personnel during the early to mid 1980s, they are no longer relevant and should be cancelled.

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
		Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
		Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?



(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affect the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

4. Clarity and Effectiveness:

YES	NO	
		Is the document written and organized in a clear and concise manner?
		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
		Do changes in industry practices warrant repealing or revising this document?
		Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

5. Intent and Statutory Authority:

YES	NO	
		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
		Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.



6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
		Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
		Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
		Does the document result in equitable treatment of those required to comply with it?
		Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
		Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

9. LISTING OF DOCUMENTS REVIEWED: Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):



Administrative Decisions (e.g., WTDs):

Attorney General's Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

10. Review Recommendation:

- | | |
|---------------------|---|
| <u> </u> | Amend |
| <u> X </u> | Repeal/Cancel (Appropriate when repeal is not conditioned upon another rule-making action.) |
| <u> </u> | Leave as is (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.) |
| <u> </u> | Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.) |

Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

The information provided in these documents is outdated and no longer relevant.

Maintenance of the Audit Directive series appears to have been abandoned some time ago. The Department does not appear to have issued a directive on or after June 6, 1996, which is the effective date of RCW 34.05.230's requirement that state agencies announce the adoption of interpretive and/or policy statements in the Washington State Register (WSR). The Department has been formally announcing (in the WSR) the cancellation of audit directives that have been identified as obsolete or in error in conjunction with its review procedures implementing Executive Order 97-02 (issued March 25, 1997). However, the reviewer was unable to find any formal process or record documenting the issuance or cancellation of directives prior to these dates.

For these reasons, when announcing the cancellation of the ETAs reviewed here in the Washington State Register the Department should explain that this action effectively cancels the entire 7000 series. This will eliminate any potential confusion should any paper



copies of/references to old, forgotten, canceled, or drafted-but-not-issued directives exist somewhere.

11. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

_____ 1
_____ 2
_____ 3
_____ 4